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HUMAN RIGHTS COMMITTEE

DOCUMENTS SUBMITTED IN COMPLIANCE WITH
A SPECIAL DECISION OF THE COMMITTEE*

BURUNDI

[12 July 1994]

I. INTRODUCTION

1. The Republic of Burundi has the honour to submit to the Human Rights Committee its special report in accordance with the decision adopted by the Committee at its 1281st meeting on 29 October 1993.

2. The Government first wishes to apologize for not having been able to respond to that request within the time-limit initially established by the Human Rights Committee. The delay was caused by a series of events which made it impossible to compile the report requested. Those events included:

(a) The virtual paralysis of national institutions following the assassination of the Head of State, His Excellency, Melchior Ndadaye, and a number of his close aides on 21 October 1993;

(b) The inter-ethnic unrest and massacres which followed that assassination and the difficult negotiations leading up to the investiture of the new President of the Republic, His Excellency, Cyprien Ntaryamira, on 5 February 1994;

(c) The sudden death of the new Head of State, Mr. Ntaryamira, and a number of his ministers in an air accident at Kigali on 6 April 1994.

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* By a decision of 29 October 1993, the Committee requested Burundi to submit a report on the situation in the country as a matter of urgency.

3. Burundi nevertheless was, and still is, deeply moved by all the expressions of sympathy extended to it during these tragic events by the international community in general, and by the Human Rights Committee in particular. Worthy of special mention are the material and moral support provided by the United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, to the Burundi authorities and people during his visit on 9 and 10 May 1994 and the dispatch of an official of the Centre for Human Rights, Mrs. Yolande Diallo, to carry out a one-month mission.

4. As Burundi's initial report concerning the International Covenant on Civil and Political Rights was submitted to the Human Rights Committee at its forty-sixth session, the present special report will confine itself to the application of articles 4, 6, 7, 9, 12 and 25 of the Covenant during the events which have taken place since 21 October 1993. In making this presentation, the Government of Burundi has been guided by its constant desire to cooperate with the Human Rights Committee and provide it with full and objective information.

II. APPLICATION OF ARTICLES 4, 6, 7, 9, 12 and 25 OF THE COVENANT

Article 4

5. Article 4 of the Covenant refers to possible derogations from the obligations under the Covenant which the Government of the Republic of Burundi might have, or is reported to have, implemented in order to restore calm to the country.

6. In this regard, no legal measures derogating from the obligations of the State or the rights of citizens as provided for and authorized in the Covenant have been taken by the Government. Throughout the crisis, relevant Burundi law has remained unchanged. It is worth noting, however, that the application of the law was made difficult by the paralysis affecting all public services.

Article 6

7. Article 6, paragraph 1, deals with the inherent right to life of every human being. There have been gross and flagrant violations of this right, as evidenced by the assassination of H.E., the late President Melchior Ndadye, the first democratically elected civilian President of Burundi, and of some of his close aides, and the massacres of thousands of other civilians (men, women, children and old people), as a result of the ethnic and political conflicts which ensued throughout the country.

8. Article 6, paragraph 2, refers to the death penalty, which may be carried out only pursuant to a final judgement rendered by a competent court and only for the most serious crimes in countries which have not abolished it. In Burundi, the Criminal Code provides for the death penalty. It is noted, however, that since 1981 the penalty is no longer carried out, even in cases of final judgements where the death sentence has been handed down. Since the crisis of October 1993, no death sentence has been pronounced in connection with those events for the simple reason that the investigations into the

various degrees of responsibility have not yet been completed. Special judicial commissions have been set up and are in operation. Their findings are eagerly awaited.

9. Article 6, paragraph 3, refers to the crime of genocide and its repression. As stated earlier, commissions of inquiry have been set up to identify offences committed and apportion responsibility. It should also be noted that two non-governmental organizations and one United Nations body have also visited Burundi and conducted investigations into the events in question. At the time of writing, the results of their investigations have not yet been officially made public. The reports of these various commissions will be used as a basis in identifying any crimes that have been committed.

10. Article 6, paragraph 4, concerns the right of anyone sentenced to death to seek pardon or commutation of the sentence, or amnesty. All of these clemency measures are provided for in Burundi's legislation and no derogating measure has been taken in the period since October 1993.

11. Article 6, paragraph 5, stipulates that sentence of death may not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women. Burundi law is consistent with this provision.

12. Article 6, paragraph 6, states that no provision may be invoked to delay or prevent the abolition of capital punishment by any State party to the Covenant. Burundi law contains no provision of this kind. Moreover, abolition of the death penalty is the second of the forty-six items in the programme of the Sahwanya-Frodebu Party, which has been in power since 10 July 1993. Unfortunately, the assassination of the first democratically elected President and the ensuing crisis have jeopardized this ideal and the implementation of the programme, so that the death penalty is still provided for in our Criminal Code.

Article 7

13. There have been a number of violations of this provision prohibiting torture or cruel, inhuman or degrading treatment, particularly during the political and ethnic massacres perpetrated in all parts of the country, including the capital. The Government has launched a pacification campaign calling on the various communities to respect human life. It has also requested the communities to respect human life and to give a decent burial to the bodies of those killed. It has also ordered the disarming of unlawfully armed civilians.

14. With regard to torture in places of detention, the authorities carry out regular tours of inspection to ensure that the human rights of detainees are respected. It is worth recalling the visit of the acting President of the Republic to the detention centres of the gendarmerie, during which he took the opportunity to urge all those concerned not to engage in torturing detainees.

Article 9

15. Article 9 stipulates that everyone has the right to liberty and security of person and prohibits any deprivation of liberty except in accordance with

procedures established by law. Under this article, anyone lawfully arrested must be informed, at the time of arrest, of the reasons for his arrest and be promptly brought before a judge so that the lawfulness of his detention may be determined. Anyone who has been the victim of unlawful arrest shall be entitled to compensation.

16. There have been frequent breaches of this provision since the crisis of October 1993, the prompt investigation of cases having been made impossible by the paralysis of the public services, including the judicial services. In fact, even in normal circumstances this provision is not fully observed, as demonstrated by the fact that Burundi's prisons are filled to overflowing with individuals awaiting trial. This situation is due partly to the shortage of competent staff and adequate resources.

17. The ethnic and political nature of the events which have shaken Burundi has severely limited freedom of movement.

Article 12

18. This article refers to the right of everyone to liberty of movement and freedom to choose his residence within the territory of his State and to enter or leave his country. As thousands of individuals have been forced into internal or external exile, and others are afraid to move freely from one district to another because their personal safety is at times threatened by uncontrollable criminal elements, it must be recognized that this article has also been violated.

19. The Government has issued clear instructions to the security forces to cooperate with local authorities in finding these criminals and making sure that they do not cause any more harm. Understandably, however, no specific measure has been taken with regard to the Covenant.

Article 25

20. Under this article, every citizen must have the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and be elected at genuine periodic elections by universal and equal suffrage and by secret ballot, and to have access, on general terms of equality, to public service in his country. This article has generally been applied.

21. Today, Burundi has a Constitution which, as demonstrated in June 1993, provides for democratic elections by direct universal suffrage and for the participation of every Burundi citizen in the conduct of the country's affairs.

III. CONCLUSION

22. In the light of this brief overview of the exercise of civil and political rights during the events which have occurred in Burundi since 21 October 1993, it is important to emphasize the political will, constantly reasserted by the Burundi Government and all those concerned at the national level, to find a satisfactory solution to all existing problems so

that human rights will once again be properly respected. This is evidenced by the many decisions and measures taken to restore civil peace and harmony among the various elements of the Burundi population. Among those which we regard as the most important are:

(a) Disarmament of the civilian population;

(b) Establishment of judicial commissions of inquiry to identify those responsible for the various crimes;

(c) The "Kajaga" and "Kigobe" agreements signed by the various political groupings in the presence of representatives of moral and socio-economic forces and of the special representatives of the Secretaries-General of the United Nations and the Organization of African Unity. These agreements form the basis of a consensus for the management of the country's political affairs;

(d) The pacification campaign launched by the Burundi authorities with the aim of, among other things, ensuring respect for human rights;

(e) The present negotiations for the restoration of the institution of the presidency which, at the time of writing, had not yet been concluded.

23. The Government of Burundi also hopes that the Human Rights Committee will not confine itself solely to information received through certain channels, but will adopt a balanced view of the actual situation in the country. Accordingly, it reiterates its hope that representatives of the Committee and of other international bodies will visit Burundi to investigate the observance of all human rights during this difficult period. This would afford an opportunity to all concerned to contribute to the understanding of the problem and provide practical advice to assist the Government in responding as rapidly as possible to the need for observance of human rights, particularly civil and political rights. Also in this connection, Burundi awaits the report of the United Nations commission of inquiry with great interest.

24. The Government of Burundi remains heedful and ready to cooperate with all parties, particularly the Human Rights Committee, to ensure the full observance of human rights, as the harmful consequences of the crisis which resulted in massive violations of human rights, have not been brought entirely under control.

25. A major addition to this report will be submitted in the next periodic report at the October 1994 session.